



Chemical Accidental Release Prevention Requirements #99-7(APCB)

Overview

This rulemaking serves a twofold purpose: First, to incorporate by reference the federal regulations to prevent accidental release of regulated substances (40 CFR Part 68 Subparts A through H, and 64 FR 964, January 6, 1999, and 64 FR 28696, May 26, 1999), and second, to update the previous incorporation by reference of the list of regulated substances (62 FR 45130, August 25, 1997, 62 FR 640, January 6, 1998, and 65 FR 13243, March 13, 2000).

Citations Affected

Amends: 326 IAC 20-2-1

Affected Persons

This rule affects approximately 520 stationary sources with more than a threshold quantity of a regulated substance in a process. A process means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of the substance. U.S. EPA's regulated substance list at 40 CFR 68.130 includes seventy-seven (77) toxic substances and sixty-three (63) flammable substances and their threshold quantities. Sources include chemical manufacturing, agricultural retailers, drinking water utilities, wastewater treatment plants, electric utilities, chemical warehouses and cold storage facilities. This rule will positively affect the health and safety of the citizens of Indiana and its environment by having in place chemical accidental release prevention requirements for these sources. On August 5, 2000, facilities using flammable substances as a fuel, or retail facilities holding

flammable substances for sale as a fuel were exempted from the requirements to submit a risk management plan.

Potential Cost

The economic impacts of this state rule are negligible because these requirements are already established by federal law.

Outreach

In coordination with the Indiana Emergency Response Commission, IDEM mailed a fact sheet to 10,000 sources in Indiana describing the federal chemical accidental release prevention requirements and risk management plan (RMP) submittal. IDEM has worked with U.S. EPA, Region V, to hold four workshops on the federal rule throughout the state.

Description

The Clean Air Act Amendments of 1990 addresses accidental releases. Section 112(r) requires EPA to establish a list of regulated substances and thresholds, and to promulgate chemical accidental release prevention regulations, including requirements for risk management plans. The Clean Air Act makes it clear that facilities that handle over a threshold amount of hazardous substances have the primary responsibility for ensuring their safe use. The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

On January 31, 1994, U.S. EPA promulgated a list of regulated substances and the method to determine whether more than a

threshold quantity of a regulated substance is present at a stationary source with the intent that at a later date it would promulgate chemical accidental release prevention requirements for these sources in accordance with Section 112(r) of the Clean Air Act Amendments of 1990. (59 FR 4478) On November 1, 1995, IDEM incorporated the list of regulated substances by reference into 326 IAC 20-2 to fulfill Title V program approval requirements, with the intention of adopting chemical accidental release prevention requirements once they became available. On June 20, 1996, U.S. EPA promulgated regulations at 40 CFR Part 68 to prevent accidental release of regulated substances and to reduce the severity of those releases that do occur. (61 FR 31668)

U.S. EPA has amended the list of regulated substances twice. On August 25, 1997, the list was amended to delete the listing and related threshold for hydrochloric acid solutions with less than thirty-seven percent (37%) concentrations of hydrogen chloride. (62 FR 45130) On January 6, 1998, the list was again amended to delete the category of Division 1.1 explosives; to exempt regulated flammable substances in gasoline used as a fuel and in naturally occurring hydrocarbon mixtures prior to initial processing; and to modify the definition of stationary source to clarify the exemption of transportation and storage incident to transportation. (63 FR 640) On January 6, 1999, U.S. EPA. amended the rule to add four mandatory and five optional (RMP) data elements; establish specific procedures for protecting confidential business information when submitting RMPs; adopt the government's use of a new industry classification system; and make technical corrections and clarifications.

On Aug. 5, 1999, President Clinton signed legislation (Chemical Safety Information, Site Security and Fuels Regulatory Relief Act) that removes from coverage by the RMP program any flammable fuel when used as fuel or held

for sale as fuel by a retail facility. The legislation also limits access to Off-Site Consequence Analysis (OCA) data that are reported in RMPs by covered facilities. For one year beginning Aug. 5, 1999, OCA information will not be available to the public except in certain ways. During that one year period, the federal government will conduct an assessment and issue regulations governing future public access to OCA data. U. S. EPA modified the list rule to conform to the fuels provision of the this Act on March 13, 2000. (65 FR 13243)

The requirements of this rule apply to sources on a process level basis. A source may have different levels of requirements for each affected process at the facility. Processes are divided into three (3) program levels based on:

- (a) the potential for offsite consequences associated with a worst-case accidental release;
- (b) accident history; or
- (c) compliance with the prevention requirements under the Occupational Health and Safety Administration's (OSHA) process safety management standard.

Processes that have no potential impact on the public in the case of an accidental release have minimal requirements. For other processes, sources implement a risk management program that includes more detailed requirements for hazard assessment, prevention, and emergency response. Processes in industrial categories with a history of accidental releases, and processes already complying with OSHA's process safety management standard are subject to a prevention program that is identical to parallel elements of the OSHA Standard. All other processes are subject to streamlined prevention requirements. All sources must prepare a risk management plan based on the risk management programs established at the source. The plans are submitted to a central point specified by U.S. EPA and will be available to state and local governments and the public. The plans were due to U.S. EPA by June 21, 1999.

This rulemaking serves a twofold purpose: (1) to incorporate by reference the federal regulations to prevent accidental release of regulated substances (40 CFR Part 68 Subparts A through H, and 64 FR 964, January 6, 1999 and 64 FR 28696, May 26, 1999), and (2) to update the previous incorporation by reference of the list of regulated substances (62 FR 45130, August 25, 1997, 62 FR 640, January 6, 1998, and 65 FR 13243, March 13, 2000). At this time IDEM is not the implementing agency for the chemical accidental release program. By adopting the federal rule by reference, IDEM will have the discretion to implement elements of the federal program that are appropriate in coordination with U.S. EPA. These regulations will encourage sources to reduce the probability of accidental releases of substances that have the potential to cause immediate harm to public health and the environment and will stimulate dialogue between industry and the public to improve accident prevention and emergency response practice.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

- (A) human, plant animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules are consistent with federal rules.

IDEM Contact

Technical information regarding this rulemaking action may be obtained from Susan Bem, Program Planning and Policy Section of the Office of Air Management at (317) 233-5697 or (800) 451-6027, press 0, and ask for 3-5697 (in Indiana). Additional information regarding this action may be obtained from Kiran Verma, Rules Development Section of the Office of Air Management at (317) 233-5678 or (800) 451-6027, press 0, and ask for 3-5678 (in Indiana).